

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In Re	§	Chapter 11
	§	
AEROPOSTALE, INC., <i>et al.</i> ,	§	Case No. 16-11275 (shl)
	§	
Debtors. <sup>1</sup>	§	Jointly Administered

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**OBJECTION OF LIT-NORTHEND, LLC TO DEBTORS' MOTION PURSUANT TO 11  
U.S.C. §365(d)(4) EXTENDING THE TIME TO ASSUME OR REJECT  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
[Dkt No 143]**

TO THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE:

Creditor and party-in-interest LIT-Northend, LLC ("LIT") objects to Debtors' Motion Pursuant to 11 U.S.C. §365(d)(4) Extending The Time to Assume Or Reject Unexpired Leases Of Nonresidential Real Property, and in support thereof would show as follows:

**BACKGROUND**

1. LIT is the landlord of Debtor Aeropostale, Inc. ("Debtor") for one of its distribution centers containing approximately 315,000 rentable square feet and located at 2 Brick Plant Road, South River, New Jersey 08810 (the "Premises"). The lease which forms the basis of this relationship is scheduled to expire on May 31, 2021.

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification number, as applicable, are as follows: Aeropostale, Inc. (3880); Aeropostale West, Inc. (7013); Jimmy'Z Surf Co., LLC (0461); Aero GC Management LLC (4257); Aeropostale Procurement Company, Inc.. (8518); Aeropostale Licensing, Inc. (8124); P.S. from Aeropostale, Inc. (5900); GoJane LLC (4923); Aeropostale Canada Corp. (N/A); Aeropostale Holdings, Inc. (7729); and Aeropostale Puerto Rico, Inc. (6477). The Debtors' corporate headquarters is located at 112 West 34<sup>th</sup> Street, 22<sup>nd</sup> Floor, New York, NY 10120.

2. Prior to the filing of this case, Debtor owed LIT \$174,175.05 for April 2016 rent and other charges. It tendered two checks in April for the payment of that amount, but those checks were returned without payment by Debtor's bank.

3. Debtor remains in the Premises and its prepetition debt to LIT is approximately the aforementioned \$174,175.05. As of the filing of this objection, Debtor has not paid any post-petition rent (most notably May 2016 rent) although it is using the Premises to conduct its business.

### **OBJECTION**

4. LIT objects to the requested extension because Debtor has failed to satisfy the spirit, if not the letter of the law, set forth in *In re Burger Boys*, 94 F.3d 755, 761 (2<sup>nd</sup> Cir 1996). In particular, Debtor has not paid post-petition rent in a timely manner. The authority of *In re Stone Barn Manhattan LLC* in this jurisdiction is clear - - debtors are "responsible for the stub rent measured on a daily basis as it accrued after the date of orders for relief..." *In re Stone Barn Manhattan LLC*, 398 B.R. 359, 365 (Bankr. S.D.N.Y.2008). Coupled with the instruction contained in 11 U.S.C. §365(d)(3) that the debtor-in-possession must timely perform all obligations, it is clear that Debtor is violating one of the primary factors in determining whether an extension should be granted - - failure to timely pay for the use of the property.

5. Debtor has also been vague regarding a timetable for paying stub rent for May 2016. Upon information and belief, Debtor has indicated that it may not pay this rent until July 2016. Such a plan, if true, violates section 365(d)(3). This court should not permit a wholesale extension of time unless Debtor commits to paying the May stub rent immediately as May will have passed by the time of the hearing on Debtor's motion.

6. Furthermore, the LIT lease is not one of debtor's primary assets as it has hundreds of leases. Debtor has also indicated that it will present a plan to either scale down its operations or sell its business which casts into doubt whether it needs this lease for its operations.

7. Debtor's request for an extension at the early stage of this case has not been driven by an analysis of its leases, and in particular the lease with LIT, but is a result of agreements made with its lenders on a DIP financing package which dictated milestones for the Debtors. In other words, Debtor's request for an extension until November 30, 2016 fails to justify why an extension to this date is needed other than this is what it agreed to in the DIP financing package. There is certainly no reason for any extension, even if supported by a justifiable need, to run past confirmation of a plan. This extension runs over two months past that deadline. Consequently, the time for debtor to decide whether or not to assume or reject the lease should not be extended or curtailed considerably.

8. Alternatively, LIT should be allowed to market the Premises during any extension period since it is doubtful that its lease with Debtor will be needed in Debtor's scaled down operation.

WHEREFORE, LIT-Northend, LLC requests that the relief sought by Debtors be denied and that it have such other and further relief to which it may be entitled.

Respectfully submitted,

KESSLER & COLLINS  
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LLC*

**CERTIFICATE OF SERVICE**

I, Howard C. Rubin, hereby certify that on May 23, 2016, I caused a true and correct copy of the *Objection To Debtors' Motion Pursuant to 11 U.S.C. §365(d)(4) Extending The Time to Assume Or Reject Unexpired Leases Of Nonresidential Real Property* to be sent via the Court's ECF System to all parties registered on same, as well as by ECF service, first class mail, postage prepaid or e-mail, on the parties listed below.

/s/ Howard C. Rubin  
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